IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8349 OF 2003

Shri Vijay Sakharam Gurav ... Petitioner

V/s

Smt. Anusuya Shantaram Patange ... Respondent

Mr. Atul Damle for the petitioner.

Mr. M.V. Limaye for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 5TH APRIL, 2006

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. The petition is preferred by the aggrieved tenant against the judgment and order passed by the Addl. District Judge, Kalyan, dated 4.9.2003 dismissing the petitioner's appeal and confirming the judgment and order passed by the Trial Court decreeing the suit on the ground that the tenant was rendered defaulter in law as he did not pay the rent for more than six months.

On perusal of the entire judgments of both the Courts below who have recorded the concurrent finding to the effect that it was obligatory on the part of the tenant to pay all the arrears of rent alongwith interest and consts of the suit on first day of hearing i.e. the date of framing the issues. However, the petitioner tenant failed to pay any arrears and there is no evidence to show that the defendant paid all arrears of rent. The record further shows that he deposited the rent in the Court, however, he did not deposit the entire rent amount due on the date of first hearing nor did he deposit the interest and costs of the suit and on such ground it was held by both the Courts below that he was rendered defaulter in law as contemplated under Sec. 12(3) of the Bombay Rent Act.

3. In short, I do not see any reason to disturb the findings of the Courts below as they are based on the available evidence on record and, therefore, do not require any interference by this Court under its writ jurisdiction as contemplated under Art. 227 of the Constitution.

4. Hence, the petition stands dismissed with no order as to costs.

5. At this stage, the learned counsel for the petitioner submitted that it is a residential premises and therefore the petitioner would require some time to seek alternative accommodation. Therefore, in view of the facts and circumstances, the decree shall not be executed till the end of March, 2007 on condition that the petitioner and all adult members from his family shall furnish undertaking to that effect and further on condition that they shall not create third party interest in the property and shall continue to pay the accrued rent to the respondent. The undertaking to be furnished within two weeks from the date of this order.

With these directions, the petition stands disposed of with no order as to costs.

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